IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1107 OF 2006

G T C Industries Ltd., .. Petitioners.

vs.

Vasant Shivram Teli

& Ors. .. Respondents.

Mr. K.S. Bapat i/by Jayesh K. Desai

for petitioners.

Mr. R.M. Joshi for respondents.

CORAM : S.U. KAMDAR, J.

DATE : 24th April, 2006.

P.C.:

. The present petition is filed challenging the order passed by the Industrial Court dated 30.11.2005 inter alia holding that the petitioner has indulged in an unfair labour practices under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the MRTU & PULP Act) and directing that the respondent workman to be paid salary and all consequential benefits for two years i.e. from 1.6.2000 to

31.5.2002. The claim of the respondent workman before the Industrial Court was that on his attaining the age of superannuation i.e. 58 years the petitioner ought to have exercised the discretion of extension of his services for further period of 2 years as contemplated under Certified Standing Orders. The argument advanced before the Industrial Court was that by non-exercise of discretion vested under the Certified Standing Orders being Certified Standing Order No. 26A thereof, the petitioners have committed unfair labour practice. Certified Standing Order 26A reads as under :-

> "26-A: The age for retirement of superannuation of the workman shall be 58 years. Extension of 2 years may be granted in proper cases purely at the discretion of the Manager subject to the physical fitness of the workmen concerned."

The said Standing Order provides the age of retirement as 58 years. However, two years extension can be granted subject to the discretion of the management and further subject to the physical fitness of the workman. In the present case on the application of the respondent workman the management has not exercised any such discretion and not granted extension of 2 years. The

respondent workman has therefore moved the present application of unfair labour practice under item 9 of Schedule IV of the MRTU & PULP Act, 1971. In my opinion, non exercise of discretion and not granting of extension which is purely a discretion of the petitioner management would not amount to any breach of any Certified Standing Order particularly Certified Standing Order No. 26A which is reproduced hereinabove. Whether to grant extension of two years or not is a sole discretion of the petitioner management under the Certified Standing Order itself and, therefore, to hold that by refusing to extend the services there is a breach of the Certified Standing Orders and therefore there is an unfair labour practice committed in my opinion can not be sustained. The said only is ex-facie perverse. Thus requires to be interfered with under Article 226 of the Constitution of India. Furthermore, it is an admitted position that by virtue of non extension of service the respondent workman has not actually worked in the company for two years still the tribunal has passed an order of payment of the salary for the aforesaid period and all benefit as if the respondent workman was working in service. In that light of the matter, the impugned order passed by the Industrial Court is required to be quashed and set aside. The complaint is dismissed. The petition is made absolute accordingly. However, there shall be no order as to

costs.